

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHAWN HAWK,

Plaintiff,

v.

FLIX NORTH AMERICA, INC., et al.,

Defendants.

No. 2:23-cv-00049-KJM CKD PS

FINDINGS AND RECOMMENDATIONS TO  
DISMISS FOR LACK OF  
SUBJECT MATTER JURISDICTION

Plaintiff, who is proceeding without counsel in this action, requests leave to proceed in forma pauperis (“IFP”).<sup>1</sup> (ECF No. 2.) See 28 U.S.C. § 1915 (authorizing the commencement of an action “without prepayment of fees or security” by a person who is unable to pay such fees). The court finds that it lacks federal subject matter jurisdiction over the action. See United Investors Life Ins. Co. v. Waddell & Reed Inc., 360 F.3d 960, 967 (9th Cir. 2004) (noting the federal court’s independent duty to ensure it has subject matter jurisdiction in the case). Accordingly, the court recommends that the action be dismissed without prejudice, and that plaintiff’s application to proceed in forma pauperis in this court be denied as moot.

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<sup>1</sup> Actions where a party proceeds without counsel are referred to a magistrate judge pursuant to E.D. Cal. L.R. 302(c)(21). See 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72. Resolution of dispositive matters by a magistrate judge are to be filed as findings and recommendations. See Local Rule 304.

## **Legal Standards**

Pro se pleadings are to be liberally construed. Hebbe v. Pliler, 627 F.3d 338, 342 & fn. 7 (9th Cir. 2010) (liberal construction appropriate even post-Iqbal). Prior to dismissal, the court is to tell the plaintiff of deficiencies in the complaint and provide an opportunity to cure—if it appears at all possible the defects can be corrected. See Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir. 2000) (en banc). However, if amendment would be futile, no leave to amend need be given. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 339 (9th Cir. 1996).

The court must dismiss a case if, at any time, it determines that it lacks subject matter jurisdiction. Fed. R. Civ. P. 12(h)(3). A federal district court generally has jurisdiction over a civil action when: (1) a federal question is presented in an action “arising under the Constitution, laws, or treaties of the United States” or (2) there is complete diversity of citizenship and the amount in controversy exceeds \$75,000. See 28 U.S.C. §§ 1331, 1332(a). Further, a plaintiff must have standing to assert a claim, which requires an injury in fact caused by defendant(s) that may be redressed in court. Harrison v. Kernan, 971 F.3d 1069, 1073 (9th Cir. 2020).

Federal courts lack subject matter jurisdiction to consider claims that are “so insubstantial, implausible, foreclosed by prior decisions of this court, or otherwise completely devoid of merit as not to involve a federal controversy.” Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 89 (1998); Hagans v. Lavine, 415 U.S. 528, 537 (1974) (court lacks subject matter jurisdiction over claims that are “essentially fictitious,” “obviously frivolous” or “obviously without merit”); see also Grancare, LLC v. Thrower by & through Mills, 889 F.3d 543, 549-50 (9th Cir. 2018) (noting that the “wholly insubstantial and frivolous” standard for dismissing claims operates under Rule 12(b)(1) for lack of federal question jurisdiction). A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989). A court may dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Id. at 327; Rule 12(h)(3).

## **Analysis**

Plaintiff names two defendants: Greyhound Lines, Inc. and its alleged parent company, Flix North America. Plaintiff alleges that, on August 11, 2022, he paid cash for a round-trip

1 ticket on a Greyhound bus from Sacramento to Fresno. (ECF No. at 1 at 2.) When he presented  
 2 the receipt to the bus driver, the driver was unable to scan the receipt and did not accept the ticket,  
 3 causing plaintiff to purchase another round-trip ticket. (*Id.* at 3.) Later, Greyhound offered  
 4 plaintiff a refund check in the amount of \$67.98, but plaintiff claimed this amount was  
 5 “insufficient to satisfy the dishonor of Defendants, and explained that the total amount of the  
 6 losses suffered by Plaintiff was \$250,101.” (*Id.* at 4.) Plaintiff alleges that defendants’ breach of  
 7 contract resulted in a quarter-million dollar financial loss because the trip to Fresno involved  
 8 some unspecified business dealings. (*Id.* at 6.)

9 The court plainly does not have federal question jurisdiction over the action, because  
 10 plaintiff does not assert any federal claims against defendant. As to diversity jurisdiction, the  
 11 diversity statute is strictly construed, and any doubts are resolved against finding jurisdiction.  
 12 *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1092 (9th Cir. 1983). As plaintiff has alleged  
 13 no legal or factual basis for the claimed damages, the amount in controversy requirement plainly  
 14 cannot be met. See *McDaniel v. Hinch*, No. 2:17-cv-02448 KJM CKD (E.D. Cal.), Order dated  
 15 July 11, 2018 (“[W]ith no stated claim triggering either diversity or federal question jurisdiction,  
 16 the complaint is properly subject to dismissal for lack of jurisdiction. Fed. R. Civ. P 8(a)(2);  
 17 *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009).”).

18 Therefore, the court recommends that the action be dismissed without prejudice for lack  
 19 of federal subject matter jurisdiction.

### 20 **RECOMMENDATIONS**

21 Accordingly, IT IS HEREBY RECOMMENDED that:

- 22 1. Plaintiff’s motion to proceed in forma pauperis (ECF No. 2) be DENIED AS MOOT;
- 23 2. The action be DISMISSED for lack of subject matter jurisdiction; and
- 24 3. The Clerk of Court be directed to CLOSE this case.

25 These findings and recommendations are submitted to the United States District Judge assigned to  
 26 the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14) days after  
 27 being served with these findings and recommendations, plaintiff may file written objections with  
 28 the court. Such a document should be captioned “Objections to Magistrate Judge’s Findings and

Recommendations.” Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

**ORDER**

In light of these recommendations, IT IS ALSO HEREBY ORDERED that all pleading, discovery, and motion practice in this action are stayed pending resolution of these findings and recommendations. Other than objections to the findings and recommendations or non-frivolous motions for emergency relief, the court will not entertain or respond to any pleadings or motions until the findings and recommendations are resolved.

Dated: April 4, 2023



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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

2/hawk0049.dismiss no SMJ, IFP moot